

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHRIS SFORZA,

Civil Action No. 07 CV 6122

Plaintiff,

-against-

ANSWER AND AFFIRMATIVE
DEFENSES

THE CITY OF NEW YORK, P.O.'S JOHN
and JANE DOE #1-10, MCDONALD'S
RESTAURANTS OF NEW YORK, INC.,
MCDONALD'S EMPLOYEES JOHN
and JANE DOE #11-20,

Defendants.

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Defendant MCDONALD'S RESTAURANTS OF NEW YORK, INC., by and through its attorneys Bonner Kiernan Trebach & Crociata, LLP, as and for its Verified Answer to Plaintiff's Complaint, sets forth upon information and belief as follows:

PRELIMINARY STATEMENT

1. Paragraphs 1 through 4 of Plaintiff's Complaint call for legal conclusions and, as such no answer is made. To the extent answers are required for any of these Paragraphs, they are denied.

JURISDICTION

2. Paragraphs 5 and 6 of Plaintiff's Complaint call for legal conclusions and, as such no answer is made. To the extent answers are required for any of these Paragraphs, they are denied.

VENUE

3. Paragraph 7 of Plaintiff's Complaint calls for a legal conclusion and, as such no answer is made. To the extent an answer is required for this Paragraph, it is denied.

JURY DEMAND

4. Defendant McDonald's Restaurants of New York, Inc. makes no answer to Paragraph 8 of Plaintiff's Complaint as there are no allegations contained therein.

PARTIES

5. Defendant McDonald's Restaurants of New York, Inc. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of Plaintiff's Complaint and so denies same.

6. Defendant McDonald's Restaurants of New York, Inc. admits only that it is a corporation duly organized and existing under and by virtue of the laws of the State of New York, and denies the remaining allegations contained in Paragraph 10 of Plaintiff's Complaint.

7. McDonald's Restaurants of New York, Inc. admits the allegations contained in Paragraphs 11 through 13 and 15 of Plaintiff's Complaint.

8. Paragraph 14 of Plaintiff's Complaint calls for a legal conclusion and, as such no answer is made. To the extent an answer is required for this Paragraph, it is denied.

9. McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraphs 16 and 17 of Plaintiff's Complaint.

10. Defendant McDonald's Restaurants of New York, Inc. makes no answer to the allegations contained in Paragraphs 18 through 23 of Plaintiff's Complaint as no allegations therein are directed to this Defendant. To the extent that any of these allegations are deemed to apply to this Defendant, they are denied.

FACTUAL ALLEGATIONS

11. Defendant McDonald's Restaurants of New York, Inc. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 24, 31 through 33 and 36 through 49 of Plaintiff's Complaint and so denies same.

12. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraphs 25 through 30, 34, 35 and 50 of Plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE FIRST CLAIM FOR RELIEF

13. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 51 by repeating and reiterating its answers to Paragraphs 1 through 50 of Plaintiff's Complaint as though set forth at length herein.

14. Defendant McDonald's Restaurants of New York, Inc. makes no answer to the allegations contained in Paragraphs 52 through 56 of Plaintiff's Complaint as they are not directed to this Defendant. To the extent that any of these allegations are deemed to apply to this Defendant, they are denied.

AS AND FOR A RESPONSE TO THE SECOND CLAIM FOR RELIEF

15. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 57 by repeating and reiterating its answers to Paragraphs 1 through 56 of Plaintiff's Complaint as though set forth at length herein.

16. Defendant McDonald's Restaurants of New York, Inc. makes no answer to the allegations contained in Paragraphs 58 and 59 of Plaintiff's Complaint as they are not directed to this Defendant. To the extent that any of these allegations are deemed to apply to this Defendant, they are denied.

AS AND FOR A RESPONSE TO THE THIRD CLAIM FOR RELIEF

17. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 60 by repeating and reiterating its answers to Paragraphs 1 through 59 of Plaintiff's Complaint as though set forth at length herein.

18. Defendant McDonald's Restaurants of New York, Inc. makes no answer to the allegations contained in Paragraphs 61 through 71 of Plaintiff's Complaint as they are not directed to this Defendant. To the extent that any of these allegations are deemed to apply to this Defendant, they are denied.

AS AND FOR A RESPONSE TO THE FOURTH CLAIM FOR RELIEF

19. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 72 by repeating and reiterating its answers to Paragraphs 1 through 71 of Plaintiff's Complaint as though set forth at length herein.

20. Defendant McDonald's Restaurants of New York, Inc. makes no answer to the allegations contained in Paragraphs 73 through 75 of Plaintiff's Complaint as they are not directed to this Defendant. To the extent that any of these allegations are deemed to apply to this Defendant, they are denied.

AS AND FOR A RESPONSE TO THE FIFTH CLAIM FOR RELIEF

21. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 76 by repeating and reiterating its answers to Paragraphs 1 through 75 of Plaintiff's Complaint as though set forth at length herein.

22. Defendant McDonald's Restaurants of New York, Inc. makes no answer to the allegations contained in Paragraphs 77 and 78 of Plaintiff's Complaint as they are not directed to

this Defendant. To the extent that any of these allegations are deemed to apply to this Defendant, they are denied.

AS AND FOR A RESPONSE TO THE SIXTH CLAIM FOR RELIEF

23. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 79 by repeating and reiterating its answers to Paragraphs 1 through 78 of Plaintiff's Complaint as though set forth at length herein.

24. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraphs 80 through 82 of Plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE SEVENTH CLAIM FOR RELIEF

25. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 83 by repeating and reiterating its answers to Paragraphs 1 through 82 of Plaintiff's Complaint as though set forth at length herein.

26. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraphs 84 through 87 of Plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE EIGHTH CLAIM FOR RELIEF

27. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 88 by repeating and reiterating its answers to Paragraphs 1 through 87 of Plaintiff's Complaint as though set forth at length herein.

28. Defendant McDonald's Restaurants of New York, Inc. makes no answer to the allegations contained in Paragraphs 89 through 91 of Plaintiff's Complaint as they are not directed to this Defendant. To the extent that any of these allegations are deemed to apply to this Defendant, they are denied.

AS AND FOR A RESPONSE TO THE NINTH CLAIM FOR RELIEF

29. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 92 by repeating and reiterating its answers to Paragraphs 1 through 91 of Plaintiff's Complaint as though set forth at length herein.

30. Defendant McDonald's Restaurants of New York, Inc. makes no answer to the allegations contained in Paragraphs 93 through 100 of Plaintiff's Complaint as they are not directed to this Defendant. To the extent that any of these allegations are deemed to apply to this Defendant, they are denied.

31. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraph 101 of Plaintiff's Complaint.

PENDANT STATE CLAIMS

**AS AND FOR A RESPONSE TO THE FIRST CLAIM FOR RELIEF
UNDER NEW YORK STATE LAW**

32. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 102 by repeating and reiterating its answers to Paragraphs 1 through 101 of Plaintiff's Complaint as though set forth at length herein.

33. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraphs 103 through 106 of Plaintiff's Complaint.

**AS AND FOR A RESPONSE TO THE SECOND CLAIM FOR RELIEF
UNDER NEW YORK STATE LAW**

34. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 107 by repeating and reiterating its answers to Paragraphs 1 through 106 of Plaintiff's Complaint as though set forth at length herein.

35. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraphs 108 and 109 of Plaintiff's Complaint.

**AS AND FOR A RESPONSE TO THE THIRD CLAIM FOR RELIEF
UNDER NEW YORK STATE LAW**

36. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 110 by repeating and reiterating its answers to Paragraphs 1 through 109 of Plaintiff's Complaint as though set forth at length herein.

37. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraphs 111 through 113 of Plaintiff's Complaint.

**AS AND FOR A RESPONSE TO THE FOURTH CLAIM FOR RELIEF
UNDER NEW YORK STATE LAW**

38. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 114 by repeating and reiterating its answers to Paragraphs 1 through 113 of Plaintiff's Complaint as though set forth at length herein.

39. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraphs 115 through 128 of Plaintiff's Complaint.

**AS AND FOR A RESPONSE TO THE FIFTH CLAIM FOR RELIEF
UNDER NEW YORK STATE LAW**

40. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 129 by repeating and reiterating its answers to Paragraphs 1 through 128 of Plaintiff's Complaint as though set forth at length herein.

41. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraphs 130 through 133 of Plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE SIXTH CLAIM FOR RELIEF
UNDER NEW YORK STATE LAW

42. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 134 by repeating and reiterating its answers to Paragraphs 1 through 133 of Plaintiff's Complaint as though set forth at length herein.

43. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraphs 135 through 139 of Plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE SEVENTH CLAIM FOR RELIEF
UNDER NEW YORK STATE LAW

44. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 140 by repeating and reiterating its answers to Paragraphs 1 through 139 of Plaintiff's Complaint as though set forth at length herein.

45. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraphs 141 through 145 of Plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE EIGHTH CLAIM FOR RELIEF
UNDER NEW YORK STATE LAW

46. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 146 by repeating and reiterating its answers to Paragraphs 1 through 145 of Plaintiff's Complaint as though set forth at length herein.

47. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraphs 147 through 150 of Plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE NINTH CLAIM FOR RELIEF
UNDER NEW YORK STATE LAW

48. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 151 by repeating and reiterating its answers to Paragraphs 1 through 150 of Plaintiff's Complaint as though set forth at length herein.

49. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraphs 152 and 153 of Plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE TENTH CLAIM FOR RELIEF
UNDER NEW YORK STATE LAW

50. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 154 by repeating and reiterating its answers to Paragraphs 1 through 153 of Plaintiff's Complaint as though set forth at length herein.

51. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraph 155 of Plaintiff's Complaint.

AS AND FOR A RESPONSE TO THE ELEVENTH CLAIM FOR RELIEF
UNDER NEW YORK STATE LAW

52. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 156 by repeating and reiterating its answers to Paragraphs 1 through 155 of Plaintiff's Complaint as though set forth at length herein.

53. Paragraph 157 of Plaintiff's Complaint calls for a legal conclusion and, as such no answer is made. To the extent an answer is required, it is denied.

54. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraph 158 of Plaintiff's Complaint.

**AS AND FOR A RESPONSE TO THE TWELFTH CLAIM FOR RELIEF
UNDER NEW YORK STATE LAW**

55. Defendant McDonald's Restaurants of New York, Inc. responds to Paragraph 159 by repeating and reiterating its answers to Paragraphs 1 through 158 of Plaintiff's Complaint as though set forth at length herein.

56. Paragraph 160 of Plaintiff's Complaint calls for a legal conclusion and, as such no answer is made. To the extent an answer is required, it is denied.

57. Defendant McDonald's Restaurants of New York, Inc. denies the allegations contained in Paragraphs 161 through 163 of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

58. Recovery is barred in this action by the failure of the Complaint to state a claim upon which relief can be granted against this Defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

59. If injuries and damages were sustained by Plaintiff at the time and place and in the manner alleged in the Complaint, such injuries and damages are attributable in whole or in part to the culpable conduct of Plaintiff or other persons or parties herein and by reason thereof, the respective rights of the parties should be determined pursuant Sections 1411 and 1412 of the CPLR.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

60. Upon information and belief any past or future costs for expenses incurred or to be incurred by Plaintiff for medical care, dental care, custodian care or rehabilitative services, loss of earnings or other economic loss, have been or will be with reasonable certainty be

replaced or indemnified in whole or in part from collateral sources as defined in Section 4545 (c) of the CPLR.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

61. Plaintiff has not sustained any damages by virtue of any act or omission of this Defendant, or any of its agents or employees.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

62. Plaintiff's claims are barred as there is no causal relationship between any acts or omissions by this Defendant and the damages, if any, suffered by Plaintiff.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

63. Any injuries alleged by Plaintiff were due to a condition of which this Defendant had no actual or constructive notice.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

64. Plaintiff has failed to mitigate damages reasonably as a matter of law.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

65. Recovery is barred in this action as to this Defendant in whole or in part by the Plaintiff's culpable conduct.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

66. Any damages sustained by Plaintiff, which were not caused by the culpable conduct of Plaintiff, were caused by the culpable conduct of persons and entities over whom this Defendant had no control.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

67. This answering Defendant is not guilty of negligence.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

68. Pursuant to the provisions of Article 16 of CPLR, should this answering Defendant be found liable to Plaintiff for damages, such liability being fifty percent or less of the total liability assigned to all persons liable, the liability of this answering Defendant for non-economic loss shall not exceed its equitable share determined in accordance with the relative culpability of all persons liable.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

69. In the event that Plaintiff has or should in the future, settle any portion of this claim arising from the allegations contained in the Complaint with any currently named or to be named Defendant, the respective rights of the remaining parties should be determined pursuant to Section 15-108 of the General Obligations Law.

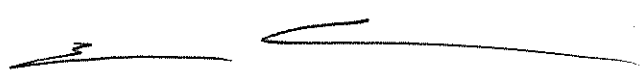
AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

70. Any and all risks, hazards, defects and dangers alleged were of an obvious and apparent nature and inherent and known or should have been known to Plaintiff herein, and Plaintiff willingly and voluntarily assumed all such risks, hazards, defects and dangers. If it is determined that Plaintiff assumed the risk, this answering Defendant pleads said facts and diminution of damages in the proportion which the culpable conduct attributable to Plaintiff bears to the culpable conduct which caused the damages.

WHEREFORE, Defendant MCDONALD'S RESTAURANTS OF NEW YORK, INC. demands judgment dismissing Plaintiff's Complaint herein, and further demands judgment over and against Plaintiff for the amount of any judgment obtained against this Defendant by Plaintiff, or on the basis of apportionment of responsibility, in such amounts as a jury or the Court may direct, together with the costs and disbursements of this action.

Dated: New York, New York
December 4, 2007

Yours etc.



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